

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
BOSTON, DISTRICT

Raul P. GONSALVES,
Petitioner,

Case No.05-10618-RCL

v.

Michael THOMPSON,
Respondent.

MOTION TO REOPEN

The Petitioner, Raul P. Gonsalves, hereby requests that this Honorable Court reopen the above reference case pursuant to Fed.R.Civ.P. 60(b) "On motion and upon such terms as are just, the court may relieve a party or a party's representative from a final judgment, order, or proceeding for the following reasons:(1) mistake, inadvertence, surprise, or excusable neglect".

The First Circuit Court in Rodwell v. Pepe, 324 F.3d 66 (1st Cir. 2003), discussed certain circumstance in which Rule 60(b) may apply, "Say, for instance, that a Federal Judge dismisses a habeas petition because the petitioner fails to respond to a show-cause order--and a subsequent Rule 60(b) motion alleges that the show-cause order was never served on petitioner". 324 F.3d at 70.

In the instant case the petitioner's habeas petition was dismissed because he failed to respond to an order he never received. The petitioner could not possibly respond to the order entered on 10/24/05 by Judge, Lindsay, because he never received the order.(Docket #25).

The petitioner's failure to receive the order from the court was through no fault of his own. The petitioner sent the court a letter indicating his change of address on October 31, 2005, (see enclosed copy) notifying the

court of his change of address. However, the docket sheet fails to reflect any such letter.

Petitioner filed a motion to have additional papers served on his power of attorney (Susan Lodico, 18 Seacoast Shores Blvd., East Falmouth, MA 02536) which was docketed on 10/04/05 (Docket #22). The petitioner's power of attorney has not and did not receive a copy of the court's order. The reason why the petitioner gave power of attorney to Mrs. Lodico was because of the situation that he is in with Immigration, so that when he is deported he can still attempt to pursue his case by having his power of attorney notify him of any court decision.

The petitioner also filed a Renewed Motion for Expedited decision with the Court from his present address on 11/09/05 (Docket #26) (Bristol County House of Correction).

The docket clearly reflects that the mail was Returned as Undeliverable on 12/13/05 (Docket # between 27 and 28).

The petitioner only learned of the Court's decision after requesting a copy of his docket sheet, which he received on 12/27/05 at the Bristol County House of Correction.

The petitioner is about to be removed from the United States for life due to the conviction he is attacking in the present case. His removal will result in him being taken away from everything in the world that matters to him. The petitioner would never abandon his claims. He has been in this country since the age of three, has absolutely no ties to his country of origin (Portugal) and barely speaks the language. He also has two sons that are U.S. citizens that mean the world to him. This habeas petition is the petitioner's only chance of remaining home, in the U.S.

It is believed that the conviction that the petitioner is attacking, which is the basis for his removal, was

Fr: Raul P. Gonsalves 137741
Dartmouth House of Correction
400 Faunce Corner Road
North Dartmouth, MA 02747

October 31, 2005

To: Clerk's Office
U.S. District Court
District of Mass.
John Joseph Moakley Courthouse
1 Courthouse Way
Boston, MA 02210

RE: Gonsalves v. Thompson et al., No.05-10618-RCL

Dear Clerk,

Please be advised that I am no longer at Suffolk County House of Correction. My new address is, Raul Gonsalves #137741-GC-43, Dartmouth House of Correction, 400 Faunce Corner Rd., North Dartmouth, MA 02747.

Please forward any decisions, papers, etc. To the new address.

Thank You,
Raul Gonsalves
Raul Gonsalves, Pro Se

cc: Eva M. Badway, Assistant A.G., One Ashburton Place, Boston, MA 02108

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AFFIDAVIT OF PETITIONER

I, Raul P. Gonsalves, the petitioner in the above reference case hereby state:

- 1.) I am the petitioner in the above reference case.
- 2.) I am representing myself in this matter, pro se.
- 3.) On October 27th, 2005, I was moved out of the Suffolk County House of Correction to Bristol County Hse of Correction.
- 4.) On October 31, 2005, I mailed a letter to the Federal District Court indicating my new address.
- 5.) On December 27th, 2005, I received a copy of the docket Entry Sheet which I had requested from the Court.
- 6.) Upon receiving the Docket Entry Sheet, I noticed that the case was dismissed for failure to respond to a Court order.
- 7.) I never received any decision from the Court regarding a time to respond or a dismissal, or whether I wished to proceed with the exhausted claims.

Signed under the pains and penalties of perjury on
this 28th day of December, 2005,

Raul Gonsalves

Raul P. Gonsalves #137741 GC-43
Bristol County Hse of Correction
400 Faunce Corner Road
North Dartmouth, MA 01747

CERTIFICATE OF SERVICE

I, Raul P. Gonsalves, hereby certify that on December 28th, 2005, I mailed a copy of the Motion to Reopen and Affidavit to, Eva M. Badway. Attorney General's Office, One Ashburton Place, Boston, MA 02108-1698, attorney of record for the respondent, Michael Thompson, by placing such in the institutional mail box, via first class mail, postage prepaid.

Raul Gonsalves

Raul P. Gonsalves #137741 GC-43
Bristol County Hse Of Correction
400 Faunce Corner Road
North Dartmouth, MA 02747